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State Bar Court of California Hearing Department San Francisco		
Counsel For The State Bar James E. Towery Chief Trial Counsel 180 Howard St., 7th Fl. San Francisco, CA 94105 Tele: (415) 538-2063	Case Number (s) 09-O-15850	(for Court's use) PUBLIC MATTER FILED <i>LS</i> OCT 01 2010 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Bar # 114637 In Pro Per Respondent Fernando A. Edwards 715 Castle Rock Rd Walnut Creek, CA 94598 Tel: (925) 788-4850	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT DISBARMENT <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
Bar # 181606 In the Matter of: Fernando A. Edwards Bar # 181606 A Member of the State Bar of California (Respondent)		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **January 29, 1996**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of (10) pages, not including the order.
- (4) A statement of acts or omissions acknowledged by respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."



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- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☒ Costs to be awarded to the State Bar
 - ☐ Costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - ☐ Costs entirely waived
- (9) ORDER OF INACTIVE ENROLLMENT:
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 220(c).

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) ☒ **Prior record of discipline**
- (a) ☒ State Bar Court case # of prior case **00-O-12185**
 - (b) ☒ Date prior discipline effective **April 12, 2002**
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: **Rule of Professional Conduct, rule 4-100**
 - (d) ☒ Degree of prior discipline **Public Reprimand**
 - (e) ☒ If respondent has two or more incidents of prior discipline, use space provided below:

See attachment
- (2) ☒ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct. **See attachment**
- (3) ☒ **Trust Violation:** Trust funds or property were involved and respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property. **See attachment**
- (4) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. **See attachment**
- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☐ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.

- (8) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☒ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. **See attachment**
- (4) ☒ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct. **See attachment**
- (5) ☒ **Restitution:** Respondent paid \$ **\$45,519.00** on **between 9/08-8/09** in restitution to **Ms. Tenturier** without the threat or force of disciplinary, civil or criminal proceedings. **See attachment**
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and respondent no longer suffers from such difficulties or disabilities.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

D. Discipline: Disbarment.

E. Additional Requirements:

- (1) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

- (2) ☒ **Restitution:** Respondent must make restitution to **Tasha Tenturier** in the amount of \$ **40,579.00** plus 10 percent interest per year from **12/21/07**. If the Client Security Fund has reimbursed **Tasha Tenturier** for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than **two (2) years** days from the effective date of the Supreme Court order in this case.

- (3) ☒ **Client Security Fund Reimbursement:** Respondent must also reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and such payment obligation is enforceable as provided under Business and Professions Code section 6140.5.

- (4) ☐ **Other:**

(Do not write above this line.)

Attachment language begins here (if any)

See attachment

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISBARMENT

IN THE MATTER OF: FERNANDO A. EDWARDS

CASE NUMBER: 09-O-15850

FACTS AND CONCLUSIONS OF LAW

Facts

1. Prior to October 2007, respondent was hired by Tasha Tenturier ("Tenturier") to oversee the construction of a major remodeling project of Tenturier's residence in San Martin, California.
2. On October 8, 2007, Chet Lavaias ("Lavaias"), on behalf of Tenturier, issued check no. 129 in the amount of \$100,000.00 to respondent to deposit and maintain in his client trust account and to use the money to make installment payments to the various contractors working on the residential remodel of the Tenturier residence.
3. On March 2007, respondent closed his client trust account. Thereafter, at all relevant times herein, respondent did not maintain a client trust account. At all relevant times herein, respondent's wife, Sharon de Edwards, maintained a general operating account at Umpqua Bank, in the name of "Sharon de Edwards, M.D. FACOG" (Account No. xxxx-xxx-1156; hereinafter "general operating account;" the account number has been omitted to protect the account from identity theft.)
4. Prior to October 19, 2007, respondent received check no. 129. On October 19, 2007, respondent sent an e-mail to Tenturier, stating:

"In the meantime, you will need to resubmit the funds. Reason: When I attempted to deposit the check to my trust account, it triggered the federal (IRS) reporting system. This is brand new, and it is caused by a provision of the Patriot Act (anti-terrorism). I do not want these people looking into my trust account. I asked my banker, how to avoid the reporting, he checked all accounts, and informed the only one that would not require the reporting is the corporate account (Sharon's medical corporation). You will therefore need to re-send the check. You can do this two ways: Make check payable to: Sharon de Edwards, M.D. FACOG; or wire it to: Routing Number xxxxxxxx19, account number xxxxx6404, Umpqua Bank. Either way, it the transfer will be made without triggering any reporting. Once it is in the corporation's account, she will write the check to my trust account, which will also not trigger any reporting since it is coming from a corporation. Sorry about the mix-up. I did not know that the Patriot Act changed this. I voided the check from Lavalas. Please call me at 925.788.4850. F. Anthony Edwards"

In truth and in fact, as of October 19, 2007, respondent did not maintain a trust account. In truth and in fact, respondent did not attempt to deposit Tenturier's check in his trust account. At the time of making the statement in his October 19, 2007 email, respondent knew his statement was false.

5. Tenturier received respondent's October 19, 2007, e-mail soon after it was sent. On November 13, 2007, Lavaias, on behalf of Tenturier, issued check no. 0129 in the amount of \$101,360.00, payable to Sharon de Edwards FACOG, for respondent to deposit in the general operating account and then transfer to his client trust account as set forth in respondent's October 19, 2007, e-mail. On November 16, 2007, respondent deposited check no. 0129 into the general operating account. Thereafter, respondent failed to transfer any portion of the \$101,360.00 into a client trust account.

6. On December 21, 2007, Frederico Cockburn, on behalf of Tenturier, issued a check in the amount of \$20,000.00, also payable to Sharon de Edwards FACOG, and sent said check to respondent. On January 11, 2008, respondent deposited said check into the general operating account, so that the combined amount entrusted to respondent was \$121,360.00 on behalf of Tenturier. No portion of this \$121,360.00 was ever transferred into a client trust account.

7. On December 10, 2007, respondent issued check #1156 in the amount of \$35,262.00 to Aaron's Construction from Tenturier's funds held in the general operating account. This was the one and only payment respondent made on behalf of Tenturier from the entrusted funds of \$121,360.00.

8. From January 11, 2008 (following the two deposits totaling \$121,360.00 in entrusted funds) through at least May 31, 2008, respondent was required to maintain at least \$86,098.00 on behalf of Tenturier in the general operating account (representing the entrusted funds of \$121,360.00 less the single payment of \$35,262.00). On January 11, 2008, and thereafter, respondent failed to maintain \$86,098.00 in the general operating account on behalf of Tenturier. By the end of January, 2008, the balance in the general operating account was only \$335.16, and the account was closed with a zero balance by the end of May 2008. After the entrusted funds had been deposited into this general operating account in November 2007 and January 2008, a large number of checks were written from this account payable to respondent's wife as cash; to respondent as cash; and to pay for housing, automobile and other personal expenses of respondent and his wife. Respondent was a signatory on his wife's general operating account and signed many of the checks written during this period. As of May 31, 2008, respondent had misappropriated at least \$86,098.00 of Tenturier's funds to his own benefit.

9. Respondent misappropriated \$86,098.00 of Tenturier's funds for his own use and benefit.

10. By July 2008, respondent had issued several checks from his wife's general operating account that were returned for insufficient funds. Tenturier therefore demanded that respondent make payments with certified funds towards the construction project. In response, respondent sent Tenturier an email on July 24, 2008, in which respondent falsely stated:

"I had to move the remaining \$88,000 out of Sharon's account due to subsequent developments here. I moved it to one of our brokers account, instructing him to maintain it liquid. He placed it in midterms investment. I have ordered its liquidation...."

In truth and in fact, respondent did not remove \$88,000.00 into any investment account and the funds had not been "lost" by any investment advisor. Rather, respondent had misappropriated the majority of

such funds with expenditures for personal purposes. At the time of making these statements in his email of July 24, 2008, respondent knew such statements were false.

11. Respondent has since repaid \$45,519.00 of the misappropriated funds to Tenturier. To date, respondent still owes Tenturier \$40,579.00.

Conclusions of Law

1. By failing to deposit the \$121,360.00 that he held for the benefit of Tenturier into a client trust account, respondent failed to deposit funds held for the benefit of his client in trust in willful violation of rule 4-100 of the Rules of Professional Conduct.
2. By misappropriating \$86,098.00 of his client's funds intentionally or by gross negligence, respondent committed an act or acts involving moral turpitude, dishonesty or corruption in willful violation of section 6106 of the Business and Professions Code.
3. By making knowingly false statements to Tenturier in his e-mails of October 19, 2007, and July 24, 2008, respondent committed an act or acts involving moral turpitude, dishonesty and corruption in willful violation of section 6106 of the Business and Professions Code.

PENDING PROCEEDINGS

The disclosure date referred to, on page 2, paragraph A(7), was September 9, 2010.

FACTS SUPPORTING AGGRAVATING AND MITIGATING CIRCUMSTANCES

AGGRAVATING CIRCUMSTANCES

Standard 1.2(b)(i). Respondent has three prior records of discipline. Respondent is currently enrolled in the Alternative Discipline Program (ADP) with a two-year actual suspension as the low level of discipline and disbarment as the high end of discipline.

In addition to the prior record of discipline addressed on page 2 of this stipulation, respondent has the following prior records of discipline:

State Bar Court case # of prior case: 06-O-11114 & 06-O-11169

Date prior discipline effective: Pending ADP matter.

Rules of Professional Conduct/State Bar Act violations: Rules of Professional Conduct, rules 3-310(C)(2), 3-310(C)(1), 3-310(E), 3-310(B)(3), 3-110(A), 4-100 and 1-320(A); Business and Professions code sections 6068(a), 6103 and 6106.

Degree of prior discipline: Two-year actual suspension to disbarment through ADP Program

State Bar Court case # of prior case: 07-O-10839, 07-O-14218, 07-O-14297

Date prior discipline effective: Pending ADP matter.

Rules of Professional Conduct/State Bar Act violations: Rules of Professional Conduct, rules 4-100(A) and 4-100(B)(4) and Business and Professions Code sections 6106, 6068(m) and 6068(i)

Degree of prior discipline: Two-year actual suspension to disbarment through ADP Program

Additional Aggravating Circumstances

Standard 1.2(b)(iii). Respondent misconduct was surrounded by bad faith and dishonesty.

Standard 1.2(b)(iii). Respondent's misconduct involved trust funds.

Standard 1.2(b)(iv). Respondent's misconduct caused significant harm to his client.

MITIGATING CIRCUMSTANCES

Standard 1.2(e)(v). Respondent displayed spontaneous candor and cooperation to the State Bar during the disciplinary proceedings.

Standard 1.2(e)(vii). Respondent displayed remorse for his misconduct.

Standard 1.2(e)(vii). Respondent paid restitution in the amount of \$45,519.00 to his client without the threat or force of disciplinary proceedings.

SUPPORTING AUTHORITY

Standard 2.2(a) requires disbarment for the willful misappropriation of entrusted funds. The standard suggests not less than a one-year actual suspension if the amount of funds is insignificantly small or if the most compelling mitigating circumstances clearly predominate. Neither of those circumstances exist in this matter.

Standard 2.2(b) requires at least a three-month actual suspension for a violation of rule 4-100, irrespective of mitigating circumstances.

Standard 2.3 requires an actual suspension or disbarment for a respondent that has committed an act of moral turpitude. Respondent committed multiple acts of moral turpitude.

Standard 1.7(a) provides that if a member is found culpable of professional misconduct in any proceeding which discipline may be imposed and the member has a record of one prior imposition of discipline as defined by standard 1.2(f), the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior proceeding was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.

Disbarment is the proper discipline for misappropriation, even when the respondent has no prior record of discipline. (See *In re Abbott* (1977) 19 Cal.3d 249 [disbarment for misappropriation of over \$29,000; no prior record of discipline]; *Kaplan v. State Bar* (1991) 52 Cal.3d 1067 [disbarment for misappropriation of approximately \$30,000 and lying to the State Bar; no prior record of discipline]; *Chang v. State Bar* (1989) 49 Cal.3d 114 [disbarment for misappropriation of over \$7,000; no prior record of discipline]; *Kelly v. State Bar* (1988) 45 Cal.3d 649 [disbarment for misappropriation of approximately \$20,000; no prior record of discipline]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal.State Bar Ct.Rptr. 511 [disbarment for misappropriation of approximately \$40,000 in one client matter; no prior record of discipline]; *In the Matter of Keuker* (Review Dept. 1991) 1 Cal.State Bar Ct.Rptr. 583 [disbarment for misappropriation of approximately \$66,000 in one client matter; no prior record of discipline].)

Based on the misappropriation alone, disbarment is the appropriate level of discipline in this matter.

In the Matter of Fernando A. Edwards	Case number(s): 09-O-15850
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By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004; 12/13/2006.)

10

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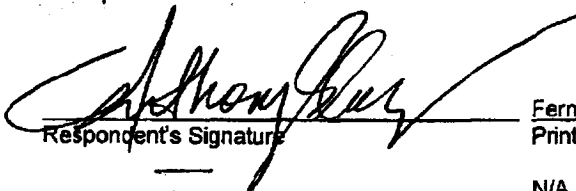
In the Matter of
Fernando A. Edwards

Case number(s):
09-O-15850

SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

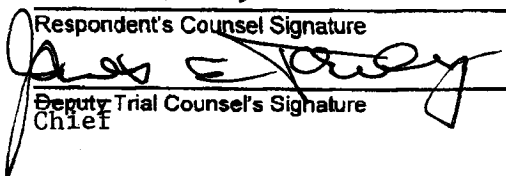
9/20/10
Date



Respondent's Signature

Fernando A. Edwards
Print Name

Date
9-24-10



Respondent's Counsel Signature

N/A
Print Name

Deputy Trial Counsel's Signature
Chief

James E. Towery
Print Name

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In the Matter of
Fernando A. Edwards

Case Number(s):
09-O-15850

ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public,
IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without
prejudice, and:


- ☒ The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- ☐ All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Respondent **Fernando A. Edwards**, State Bar no. 181606, is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4).

Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 490(b) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

9-30-10
Date


Judge of the State Bar Court
Pro Tem Judge

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on October 1, 2010, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND
ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

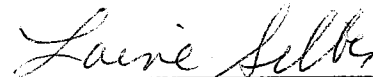
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

FERNANDO A. EDWARDS
2121 N CALIFORNIA BLVD STE 290
WALNUT CREEK, CA 94596

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

JAMES EARL TOWERY, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on October 1, 2010.



Laine Silber
Case Administrator
State Bar Court